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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

APL CO. PTE., LTD. and AMERICAN PRESIDENT LINES, LTD., Plaintiffs, v. J.R.J. ENTERPRISES, INC., Defendant.

) Case No. 10-2253 SC
) ORDER GRANTING MOTION FOR
) DEFAULT JUDGMENT
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I. INTRODUCTION

Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd. (collectively, "Plaintiffs") seek entry of Default Judgment against Defendant J.R.J. Enterprises, Inc. ("Defendant"). ECF No. 10 ("Mot."). Plaintiffs allege Defendant breached a service contract by failing to meet minimum cargo commitments. See Docket No. 1 ("Compl."), ¶¶ 6-26. Having considered the papers submitted, the Court concludes that entry of Default Judgment against Defendant is appropriate, and GRANTS Plaintiffs' Motion.

II. BACKGROUND

Plaintiffs are ocean carriers of goods for hire between international ports. Compl. ¶ 6. American President Lines, Ltd. is a Delaware corporation moving cargo to and from the People's

1 Republic of China, Japan, Taiwan, and Mexico; APL Co. Pte., Ltd. is
2 an affiliated Singapore corporation moving cargo to and from other
3 locations. See Vargas Decl. Ex. A ("Contract No. LA05/0233")
4 § 1(d).¹ On or about November 18, 2005, Plaintiffs entered into a
5 written service contract with Defendant in which Plaintiffs agreed
6 to transport Defendant's cargo from Columbia and Ecuador to the
7 United States. Id. App. E. The contract contained a Minimum
8 Volume Commitment ("MVC") requiring Defendant to tender a minimum
9 of fifty "freight equivalent units" ("FEUs") during the contract
10 term. Compl. ¶¶ 8-9; Contract No. LA05/0233 § 2(b), App. E § 4.
11 The contract also included a liquidated damages or "dead freight"
12 provision, requiring Defendant to pay "deadfreight in the amount of
13 \$350 for each FEU by which the MVC . . . exceeds the volume
14 actually tendered." Compl. ¶ 10; Contract No. LA05/0233 §§ 3(b),
15 6(b). The contract also includes a clause stating that "[t]he
16 costs and expenses of . . . litigation (including reasonable
17 attorney's fees and costs) shall be borne by the non-prevailing
18 party." Contract LA05/0233 § 4(a).

19 Plaintiffs allege that Defendant tendered only fourteen FEUs
20 of cargo to Plaintiffs - thirty six fewer FEUs than the MVC -- thus
21 obligating Defendant to pay Plaintiffs liquidated damages of
22 \$12,600. Compl. ¶ 12; Vargas Decl. ¶ 6. Plaintiffs invoiced
23 Defendant for \$12,600, see Vargas Decl., Ex. B ("Invoice"), but
24 Defendant failed to pay. Compl. ¶¶ 13-14; Vargas Decl. ¶¶ 7-8.
25 Plaintiffs' Complaint was filed on May 25, 2010. See Compl. The
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27 ¹ Jose Alonso Vargas ("Vargas"), a financial analyst in Plaintiffs'
28 accounts receivable and collections department, filed a declaration
in support of the Motion. ECF No. 11.

1 Clerk of the Court entered Default against Defendant on August 31,
2 2010. Docket No. 15. Plaintiffs seek a Default Judgment of
3 \$12,950, the amount owed under the terms of the contract plus \$350
4 for the costs of suit.

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6 **III. LEGAL STANDARD**

7 After entry of a default, the Court may enter a default
8 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do
9 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092
10 (9th Cir. 1980), is guided by several factors. As a preliminary
11 matter, the Court must "assess the adequacy of the service of
12 process on the party against whom default is requested." Bd. of
13 Trs. of the N. Cal. Sheet Metal Workers v. Peters, No. 00-0395,
14 2000 U.S. Dist. LEXIS 19065, at *2 (N.D. Cal. Jan. 2, 2001). If
15 the Court determines that service was sufficient, it may consider
16 the following factors in its decision on the merits of a motion for
17 default judgment:

18 (1) the possibility of prejudice to the
19 plaintiff, (2) the merits of plaintiff's
20 substantive claim, (3) the sufficiency of the
21 complaint, (4) the sum of money at stake in the
22 action; (5) the possibility of a dispute
concerning material facts; (6) whether the
default was due to excusable neglect, and (7)
the strong policy underlying the Federal Rules
of Civil Procedure favoring decisions on the
merits.
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24 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

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1 **IV. DISCUSSION**

2 **A. Service of Process**

3 Defendant is a corporation. Compl. ¶ 5. Accordingly, service
4 of process is governed by Federal Rule of Civil Procedure 4(h).
5 Under Rule 4(h), a corporation may be served "by delivering a copy
6 of the summons and of the complaint to an officer, a managing or
7 general agent, or any other agent authorized by appointment or by
8 law to receive service of process." Fed. R. Civ. P. 4(h)(1)(B).
9 On June 7, 2010, a registered New Jersey process server served the
10 Summons and Complaint on Jimmy Machuca, the President of J.R.J.
11 Enterprises, Inc., at Defendant's corporate offices in Fairlawn,
12 New Jersey. See Docket No. 5 ("Proof of Service"); deLangis Decl.
13 ¶ 3.² Accordingly, the Court finds service of process on Defendant
14 to be proper.

15 **B. Default Judgment**

16 "The general rule of law is that upon default the factual
17 allegations of the complaint, except those relating to the amount
18 of damages, will be taken as true." Geddes v. United Fin. Group,
19 559 F.2d 557, 560 (9th Cir. 1977). Accepting the allegations in
20 the Complaint as true, as it must, the Court finds that the Eitel
21 factors favor default judgment.

22 Plaintiffs would be prejudiced absent entry of default
23 judgment. Defendant's failure to meet the contractually obligated
24 MVC triggered the liquidated damages provision in the contract.
25 Plaintiffs would be left without a legal remedy if it were denied
26 an entry of default judgment.

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28 ² Mark K. deLangis ("deLangis"), counsel for Plaintiffs, filed a declaration in support of the Motion. Docket No. 12.

1 Plaintiffs have properly alleged the necessary elements for
2 their causes of action. Plaintiffs and Defendant entered into a
3 facially valid contract; Defendant failed to meet the MVC,
4 triggering the liquidated damages provisions. The Complaint
5 identifies the contract at issue, how it was breached (failure to
6 meet the MVC of fifty FEUs), and the appropriate remedy (liquidated
7 damages of \$350 for each FEU by which the MVC exceeds the volume
8 actually tendered). The liquidated damages provisions of \$350 per
9 FEU are not so unreasonable as to render the contracts
10 unenforceable. See Cal. Civ. Code § 1671(b) ("a provision in a
11 contract liquidating the damages for the breach of the contract is
12 valid unless the party seeking to invalidate the provision
13 establishes that the provision was unreasonable under the
14 circumstances existing at the time the contract was made").³
15 Accordingly, Plaintiffs' Complaint is sufficient.

16 The amount of money at stake in this action -- \$12,600 plus
17 \$350 in litigation costs -- is not so great as to preclude default
18 judgment. The amount at issue is also unambiguous and easily
19 calculable in light of the relevant contract provisions.

20 There is some potential for a dispute concerning material
21 facts in this action; in particular, whether Defendant failed to
22 meet its MVC of fifty FEUs. However, Vargas declares, under
23 penalty of perjury, that Defendant failed to tender the required
24 number of FEUs. Vargas Decl. ¶ 6. Thus this factor favors default
25 judgment.

26 ³ Maritime contract actions are governed by state law, provided
27 state law does not clearly conflict with federal maritime law. See
28 Aqua-Marine Constructors, Inc. v. Banks, 110 F.3d 663, 667-68 (9th Cir. 1997).

1 In addition, no facts suggest Defendant's failure to
2 participate in this action was due to excusable neglect. Defendant
3 was served with notice of the present action, see Proof of Service,
4 and did not participate. deLangis Decl. ¶ 4. This factor favors
5 entry of default judgment. Finally, while it is preferable to
6 decide cases on the merits whenever possible, Rule 55(b) allows
7 entry of default judgment in situations such as this, where
8 Defendants have failed to litigate.

9 **C. Remedy**

10 Plaintiffs request liquidated damages of \$12,600 plus \$350 in
11 costs. The Court finds that Plaintiffs' calculation of liquidated
12 damages to be reasonable and correct in light of the facts alleged
13 and the terms of the contract. The contract also provides for
14 litigation costs to be paid by the non-prevailing party. Contract
15 No. LA05/0233 § 4(a). The Court finds the \$350 sought is
16 reasonable given the \$350 filing fee imposed by 28 U.S.C. §
17 1914(a).

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19 **V. CONCLUSION**

20 The Court GRANTS the Motion for Default Judgment filed by
21 Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd.,
22 in the amount of \$12,950.

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24 IT IS SO ORDERED.

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26 Dated: September 24, 2010


UNITED STATES DISTRICT JUDGE

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